All the Judges of a former Court of Appeal therefore in a considered judgment as to the effects of this section have in terms decided that a Judge may act '*ex proprio motu*' to enforce its provisions and to my mind that ought to conclude the matter.

The Appellant's counsel indeed did not put it forward as one of his grounds of Appeal and stated when the point was raised by the learned C. J. that he understood that it had been settled against him in *Re Sarkies and Johannes*. It seems to me that it is of most vital importance that when the law has been clearly laid down by the Court of Appeal it should remain undisturbed except by legislation: otherwise it will always be a matter of uncertainty what the law is. The inferior Courts will hesitate to act on decisions which may be upset by subsequent Courts of Appeal and the public will not know what their rights are. Indeed I fail to see the use or advantage of going to the expense of producing local reports if their authority is to be disregarded.

The fact that there is nothing corresponding to this legislation in England does not seem to me to be relevant to the discussion. If the local legislature acting in the undoubted exercise of its powers has seen fit to confer this power on the Judges then it should be exercised. With the utmost respect too, it seems to me, that to argue that because the words 'a Judge' are used instead of 'the Judge' the legislation could not have contemplated that the Judge should act *ex proprio motu* since only the Judge who sat on the examination would be qualified, involves a non sequitur. It is true as Braddell, J. says that "dealing with the case where a Judge acts of his own motion, it seems to me that only the Judge who heard the public examination would act under Section 107A. I can hardly conceive a Judge acting on his own motion in such a case without himself hearing the public examination of the debtor" but that is a vastly different thing from saying that because another Judge may act on motion therefore the Judge who has heard the public examination cannot act *ex proprio motu*.

In this case no such question arises. The Judge who heard the examination acted and in my opinion not only was he empowered to do so in express terms by the section of the Ordinance but his right to do so had been clearly laid down by the Court of Appeal.

Appeal allowed.

Solicitor for the Appellant—*Wright Motion.*

[ORIGINAL CIVIL JURISDICTION]
DEANE, J.
October 4, 1927.

WEE KAH KIAT vs. THE MUNICIPAL COMMISSIONERS OF SINGAPORE.

[SINGAPORE CIVIL SUIT No. 713 of 1926]

Ordinance No. 135 (Municipal) S 204 (5) —claim for compensation for refusal to renew licence.

The discretion of the Municipal Commissioners to grant or refuse licenses under Section 204(1) of Ordinance No. 135 (Municipal) is absolute.

A renewal of a licence is equivalent to a grant of fresh licence.

If the Municipal Commissioners of Singapore refuse to renew a licence to carry on a rubber treating factory at the end of the year or other period for which it is given, the licensee is not entitled to claim compensation under S.204(5) of Ordinance No. 135 (Municipal) for any loss which he may sustain thereby.

Trial of action before Deane, J.

The Municipal Commissioners of Singapore issued to Wee Kah Kiat a licence to work a rubber treating factory near Alexandra Road. By the actual terms of the licence any breach of the terms endorsed thereon rendered the licence liable to revocation without notice. The licence was renewed annually. On the 23rd December 1925 the Commissioners sent to the licensee an intimation that his licence which would expire on 31st December 1925 would not be renewed. The licensee applied for an extension of time and was given extensions up to the 31st July, 1926 when he had to shut down the factory. The licence was in form an annual licence.

The Plaintiff brought proceedings by Writ of Summons against the Defendants claiming a declaration that he was entitled to compensation under section 204 subsection 5 of Ordinance 135 (Municipal) in respect of the determination of his licence and to have such compensation assessed.

Everitt (*Seth* with him) for Plaintiff:—

This factory was erected in an area which was not prohibited for offensive trade. Under section 205 of the Municipal Ordinance the trade is a necessary trade and therefore allowed under licence under section 204 of that Ordinance. The refusal to re-grant the licence is equivalent to a revocation of the licence. The legislature must have intended that compensation should be given for termination of a licence unless the licence was determined by reason of some misconduct on the the part of the licensee such as breach of conditions of the licence.

F. G. Stevens (*K. K. O'Connor* with him) for Defendants:—

The Municipal Commissioners have absolute discretion whether they will or will not grant the licence from year to year. Renewal of a licence

is equivalent to the grant of a fresh licence. I agree that the conditions of the licence have not in fact been broken in this case. He cited:—

The Queen v. *Kay*, 10 Q. B. D. p.213.
Sharpe v. *Wakefield*, 21 Q. B.D. p.66.

DEANE, J. delivered an oral judgment. He accepted the argument of Counsel for the Defendants and gave judgment in their favour accordingly with costs and a certificate for two counsel.

Solicitors for Plaintiff—*Sisson & Delay.*
Solicitors for Defendants—*Drew & Napier.*

[ORIGINAL CIVIL JURISDICTION]
MILLS, J.
July 27, 1933.

CHANG KAM LONG v. H. H. BUSFIELD AND ANOTHER.

[SINGAPORE SUIT No. 1068 of 1932]

Settled land—Repairs—Apportionment of costs as between capital and income.

A Testator devised his immoveable property on certain trusts during the lives of certain persons then in being, and for division on the death of the last survivor. Much of the property was old and required considerable repairs and renewals from time to time. The beneficiaries entitled to the income during the trust term contended that part of such expenditure should be borne by capital and not by income.

Held,—

(i) Repairs which are usually done in the Colony by a person in occupation of premises are ordinary repairs the cost of which must fall upon the tenant for life.

(ii) Repairs which are necessary for the preservation of the property may be executed by the Trustees under the heading of "salvage" and paid for from capital.

(iii) With regard to all other repairs and improvements the Trustees should apply to the Court for directions.

(iv) Upon such an application the Court has a general jurisdiction to give leave to make judicious repairs or improvements and will adjust the burden of expenditure equitably between the tenant for life and the remainderman.

Trial of issue.

By his Will dated the 6th July, 1916, Thio Tiauw Siat devised and bequeathed the residue of his immoveable property to his executors upon certain trusts during a trust term specified as the lives of ten named persons and the survivor of them.

Among other trusts, the Testator's house No. 14, Leith Street, was to be maintained as a family house and the Executors and Trustees were authorised to expend during the trust term such sum as they thought proper not exceeding the monthly sum of $250 "such payment to be made in order to defray out of such, the costs of the ordinary repairs and painting and whitewashing and the lighting up of the said family house and servants' wages and general expenses necessarily incident to the upkeep of the said family house and family property and shall include the payment of assessment and general and domestic water rates but I particularly declare that no part of such sum so to be paid as aforesaid shall be expended in supplying food or drink or clothing to any of the persons for the time being entitled, to occupy the said family house as aforesaid or for the upkeep of any horses or carriages."

The Testator further directed his said Trustees to hold all the residue and remainder of his said moveable and immoveable property upon trust as to the immoveable property to manage rent let or lease out the same upon such terms as his Trustees should think fit and to divide the annual income and to pay the same during the said trust term to the life tenants therein specified.

Many of the houses belonging to the estate were in a poor condition of repair and some were uninhabitable. The Trustees executed repairs which cost several thousands of dollars and their architects reported that further heavy expenditure was necessary to put and keep the properties into tenantable condition. One old building which could not be let was converted into shop houses and thus became lettable.

At the time there were no capital moneys available the capital being represented by the settled land, and all these repairs and improvements were paid for in the first place out of income, leaving the question of the ultimate incidence of the cost as between capital and income for decision later.

An administration action having been started and a decree made therein, the Trustees applied to the Court for directions as to how the cost of the repairs and improvements was to be borne as between capital and income. On that application persons were appointed to represent the two classes of beneficiaries concerned under the Will of the Testator namely the class of all those who were interested in contending that all the cost should be borne by income (i.e. the remainderman) and the class of all those who were interested in contending that all the cost should be borne by capital (i.e. the tenants for lives).

An issue was by consent ordered to be tried between them to decide these questions of mixed fact and law.

Laycock for the Trustees, referred to the following authorities, *Conway* v. *Fenton*, L.R. 40 Ch.D. 512, *re Clitheroe's Settled Estates*, 20 L.T. 6, *In re de Teissier's Trusts*, L.R. (1893) 1 Ch. 153, Lewin on Trusts, Godefroi on Trusts and Halsbury's Laws of England.

E. A. Stevens for the life tenants referred to *In re Tucker's Settled Estates*, L.R. (1895) 2 Ch. 468, and *In re Farnham's Settlement*, L.R. (1904) 2 Ch. 561.